

INSTRUCTIONS FOR NEPA CHECKLIST

These instructions explain the procedure for processing Categorical Exclusions under the National Environmental Policy Act (NEPA) for projects that are funded or permitted by the Federal Highway Administration (FHWA). The checklist and instructions comply with FHWA regulations that implement NEPA, 23 CFR §771(1987), and were approved by the FHWA on July 15, 1996.

I. GENERAL DEFINITION OF CATEGORICAL EXCLUSIONS

Before answering the questions on the NEPA Checklist, the preparer must be familiar with the general definition of Categorical Exclusions. Sections A and B describe the general criteria for Categorical Exclusions according to 23 CFR 771. Sections C, D and E define the Automatic Categorical Exclusions, Programmatic Categorical Exclusions and Categorical Exclusions with Documentation to which these "Instructions for NEPA Checklist" are to be applied.

A. 23 CFR §771.117(a)

Categorical Exclusions are a category of actions which do not individually or cumulatively have a significant effect on the human environment and which were found by FHWA, based on past experience with similar actions, not to involve significant environmental effects. As defined in 23 CFR §771.117(a), Categorical Exclusions are actions which:

1. do not induce significant impacts to planned growth or land use for the area;
2. do not require the relocation of significant numbers of people;
3. do not have a significant impact on any natural, cultural, recreational, historic or other resource;
4. do not involve significant air, noise, water or water quality impacts;
5. do not have significant impacts on travel patterns; or
6. do not otherwise, either individually or cumulatively, have significant environmental impacts.

B. 23 CFR §771.117(b)

An action that would normally be classified as a Categorical Exclusion but could involve unusual circumstances will require the New York State Department of Transportation (NYSDOT), in cooperation with the FHWA, to conduct appropriate environmental studies to determine if the Categorical Exclusion classification is proper. As defined in 23 CFR §771.117(b), such unusual circumstances include:

1. significant environmental impacts;

2. substantial controversy on environmental grounds;
3. significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
4. inconsistencies with any Federal, State or local law, requirement or administrative determination relating to the environmental aspects of the action.

C. AUTOMATIC CATEGORICAL EXCLUSIONS

The FHWA has determined that the following actions meet the criteria for Categorical Exclusions and normally do not require further NEPA approval from the FHWA. As described in 23 CFR §771.117(c) (the C List), the actions are:

1. activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR Part 630; approval of project concepts under 23 CFR Part 476; engineering to define the elements of a proposed action or alternatives so that social, economic and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system;
2. approval of utility installations along or across a transportation facility;
3. construction of bicycle and pedestrian lanes, paths and facilities;
4. activities included in the State's highway safety plan under 23 U.S.C. 402;
5. transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action;
6. the installation of noise barriers or alterations to existing publicly-owned buildings to provide for noise reduction;
7. landscaping;
8. installation of fencing, signs, pavement markings, small passenger shelters, traffic signals and railroad warning devices where no substantial land acquisition or traffic disruption will occur;
9. emergency repairs under 23 U.S.C. 125;
10. acquisition of scenic easements;
11. determination of payback under 23 CFR Part 480 for property previously acquired with Federal-aid participation;

12. improvements to existing rest areas and truck weigh stations;
13. ridesharing activities;
14. bus and railcar rehabilitation;
15. alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons;
16. program administration, technical assistance activities and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand;
17. the purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a Categorical Exclusion;
18. track and railbed maintenance and improvements when carried out within the existing right-of-way;
19. purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site; or
20. promulgation of rules, regulations and directives.

In addition to the actions listed above, the FHWA has determined on July 22, 1996 that projects limited in scope to the work included in NYSDOT's lists of element-specific highway and bridge work clearly will not generate significant impacts. Therefore, these projects satisfy all of the conditions and criteria in 23 CFR 771 for categorically excluded actions. The July 22, 1996 memo and element-specific project lists are attached.

D. PROGRAMMATIC CATEGORICAL EXCLUSIONS

The FHWA has approved a Categorical Exclusion as an additional action which meets the criteria for a Categorical Exclusion under 23 CFR §771.117(d). If the proposed action meets the criteria in the NEPA Assessment Checklist, questions 3-21, the action is a Categorical Exclusion. No additional FHWA approval is required.

E. CATEGORICAL EXCLUSIONS WITH DOCUMENTATION

Other actions that meet the criteria for a Categorical Exclusion may be classified as a Categorical Exclusion only after FHWA approval. The NYSDOT is required to submit documentation that demonstrates that the specific conditions or criteria for classification as a Categorical Exclusion are satisfied and that significant environmental effects will not result. As described in 23 CFR §771.117(d) (the D List), the actions include, but are not limited to, the following:

1. modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders or adding auxiliary lanes (e.g., parking, weaving, turning, climbing);
2. highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting;
3. bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings;
4. transportation corridor fringe parking facilities;
5. construction of new truck weigh stations or rest areas;
6. approvals for disposal of excess right-of-way or for joint or limited use of right-of-way where the proposed use does not have significant adverse impacts;
7. approvals for changes in access control;
8. construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic;
9. rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users;
10. construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic;
11. construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community; or
12. acquisition of land for hardship or protective purposes, advance land acquisition loans under Section 3(b) of the Urban Mass Transit Act. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisitions qualify for a Categorical Exclusion only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

II. PROCEDURE

Timing

A preliminary version of the checklist should be completed in the Scoping Phase. Then the final version of the checklist should be completed in Design Phase I. The preparer should review the completed checklist with the Regional Environmental Contact.

Automatic & Programmatic

For projects that are Automatic or Programmatic Categorical Exclusions, the Region submits the Final Design Report, including the checklist, or if a Design Report is not required, the checklist with sufficient information to describe the project to the Main Office functional unit that is the Design liaison unit with the FHWA. The first page of the Categorical Exclusion Determination Memo (see attached) must be sent to the Office of Budget and Finance, Project Management and Letting. Project Management and Letting will notify the FHWA of the Categorical Exclusion Determination. In addition, a carbon copy should be sent to other appropriate Main Office functional units, such as the Structures Division for bridge replacement projects.

Categorical Exclusion with Documentation

For projects that are Categorical Exclusions with Documentation, the Region submits two copies of the Final Design Report, including the checklist and additional documentation, or if a Design Report is not required, the checklist, additional documentation and sufficient information to describe the project to the Main Office Design liaison unit. The submission must include a request to obtain the FHWA's Categorical Exclusion classification. A carbon copy should also be sent to other appropriate Main Office functional units, such as the Structures Division for bridge replacement projects.

If there is Section 4(f) involvement, the Section 4(f) statement must be approved before the FHWA will approve the Categorical Exclusion classification.

III. DEFINITIONS

Minor Amount of Right-of-Way

A minor amount of right-of-way is defined as not more than 10 percent of a parcel for parcels under 4 ha (10 acres) in size, 0.4 ha (1 acre) of a parcel 4 ha to 40.5 ha (10 to 100 acres) in size and 1 percent of a parcel for parcels greater than 40.5 ha (100 acres) in size.

National Environmental Policy Act (NEPA)

A law that requires Federal agencies to make decisions based on the understanding of environmental consequences, codified at 42 U.S.C. §4371, et seq.

Section 4(f)

A section of the Department of Transportation Act of 1966 (49 U.S.C. §303) and similar language in the Federal Highway Act (23 U.S.C. §138) that requires the Secretary of Transportation to make a specific determination before authorizing the use of publicly-owned land of a public park, recreation area, or wildlife or waterfowl refuge, or land of a historic site in a highway project.

SAMPLE CATEGORICAL EXCLUSION DETERMINATION MEMO

TO: [Include the appropriate Main Office liaison with the FHWA (i.e., select one of the following). Refer to page iv and v of the DPM Introduction for guidance on the appropriate Main Office Design liaison with FHWA.]

- [a] P. J. Bellair, Design Quality Assurance Bureau, 5-410 0750
- [b] D. H. Fasser, Landscape Architecture Bureau, 4-110 0412
- [c] J. M. O'Connell, Structures Division, 5-6th Floor 0600
- [d] T. C. Werner, Traffic/Planning Division, 5-312 0464

FROM: _____, Regional Design Engineer, Region _____

SUBJECT: **CATEGORICAL EXCLUSION DETERMINATION**

PIN: _____

[Description] _____

_____ **COUNTY**

DATE: _____

Attached for your information is the _____ [Final Design Report, Draft Design Report, SSM/FDR] for the subject project with the NEPA Checklist included as Appendix _____. Based upon the criteria in the NEPA checklist, the subject project meets the requirements of _____ [an Automatic, a Programmatic] Categorical Exclusion.

This project has been progressed as a NEPA Class II project in accordance with the NYSDOT Design Procedure Manual (DPM). All requirements requisite to these actions and approvals have been met, the required independent quality control reviews separate from the functional group reviews have been accomplished, and the work is consistent with established standards, policies, regulations and procedures, except as otherwise noted and explained.

Attachment

cc: J. L. Church, Project and Letting Management, 5-520 0520

_____, Regional Environmental Contact, Region _____

_____, Project Manager, Region _____

_____, [Job Manager], Region _____

NEPA ASSESSMENT CHECKLIST

Answer the following questions by checking YES or NO.

I. THRESHOLD QUESTION

YES NO

1. Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?

M If YES, the project does not qualify as a Categorical Exclusion and an EA or EIS is required. You may STOP COMPLETING THE CHECKLIST.

M If NO, go on.

II. AUTOMATIC CATEGORICAL EXCLUSION

YES NO

2. Is the project an action listed as an Automatic Categorical Exclusion in 23 CFR §771.117(c) (C List) and/or is the project an element-specific project classified by FHWA as a Categorical Exclusion on July 22, 1996?

M If YES to question 2, the project qualifies for a C List Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. The checklist should be included in the appendix of the Final Design Report (or Scope Summary Memorandum/Final Design Report). The CATEGORICAL EXCLUSION DETERMINATION memo is to be sent to the appropriate Main Office Design liaison unit with a copy of the Final Design Report (or Scope Summary Memorandum/Final Design Report). A copy of the CATEGORICAL EXCLUSION DETERMINATION memo must also be sent to the Office of Budget and Finance, Project and Letting Management, and others (see sample DETERMINATION memo attached).

(Note - Even if YES to question 2, there may be specific environmental issues that still require an action such as an EO 11990 Wetland Finding or a determination of effect on cultural resources. The project is still an Automatic Categorical Exclusion but the necessary action must be taken, such as obtaining FHWA's signature on the wetland finding. Refer to the appropriate section of the Environmental Procedures Manual for guidance.)

M If NO to question 2, go on.

III. PROGRAMMATIC CATEGORICAL EXCLUSION

YES NO

3. Is the project on new location or does it involve a change in the functional classification or added mainline capacity (add through-traffic lanes)?

	YES	NO
4. Is this a Type I project under 23 CFR 772, "Procedures for Abatement of Highway Traffic Noise and Construction"?	_____	_____
5. If the project is located within the limits of a designated sole source aquifer area or the associated stream flow source area, is the drainage pattern altered?	_____	_____
6. Does the project involve changes in travel patterns?	_____	_____
7. Does the project involve the acquisition of more than minor amounts of temporary or permanent right-of-way (a minor amount of right-of-way is defined as not more than 10 percent of a parcel for parcels under 4 ha (10 acres) in size, 0.4 ha (1 acre) of a parcel 4 ha to 40.5 ha (10 to 100 acres) in size and 1 percent of a parcel for parcels greater than 40.5 ha (100 acres) in size?	_____	_____
8. Does the project require a Section 4(f) evaluation and determination in accordance with the FHWA guidance?	_____	_____
9. Does the project involve commercial or residential displacement?	_____	_____
10. If Section 106 applies, does FHWA's determination indicate an opinion of adverse effect?	_____	_____
11. Does the project involve any work in wetlands requiring a Nationwide Wetland Permit #23?	_____	_____
12. Does the project involve any work in wetlands requiring an individual Executive Order 11990 Wetland Finding?	_____	_____

YES **NO**

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| 13. Has it been determined that the project will significantly encroach upon a flood plain based on preliminary hydraulic analysis and consideration of EO 11988 criteria as appropriate? | _____ | _____ |
| 14. Does the project involve construction in, across or adjacent to a river designated as a component proposed for or included in the National System of Wild and Scenic Rivers? | _____ | _____ |
| 15. Does the project involve any change in access control? | _____ | _____ |
| 16. Does the project involve any known hazardous materials sites or previous land uses with potential for hazardous material remains within the right-of-way? | _____ | _____ |
| 17. Does the project occur in an area where there are Federally listed endangered or threatened species or critical habitat? | _____ | _____ |
| 18. Is the project, pursuant to EPM Chapter 1A and Table 2 and Table 3 of 40 CFR Parts 51 and 93, non-exempt or does it exceed any ambient air quality standard? | _____ | _____ |
| 19. Does the project lack consistency with the New York State Coastal Zone Management Plan and policies of the Department of State, Office of Coastal Zone Management? | _____ | _____ |
| 20. Does the project impact or acquire any Prime or Unique Farmland as defined in 7 CFR Part 657 of the Federal Farmland Protection Policy Act <u>and</u> are there outstanding compliance activities necessary? (<u>Note:</u> Interpret compliance activity to mean completion of Form AD 1006.) | _____ | _____ |

M If NO for questions, 3-20, go on to answer question 21.

M If YES to any question 3-20, project will not qualify as a Programmatic Categorical Exclusion. Answer questions 21 and 22 for documentation only and go on to question 23.

21. Does the project involve the use of a temporary road, detour or ramp closure?	YES	NO
	_____	_____

M If NO to questions 3-20 and NO to question 21, the project qualifies as a Programmatic Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. The checklist should be included in the appendix of the Final Design Report (or Scope Summary Memorandum/Final Design Report). The CATEGORICAL EXCLUSION DETERMINATION memo is to be sent to the appropriate Main Office Design liaison unit with a copy of the Final Design Report (or Scope Summary Memorandum/Final Design Report). A copy of the Categorical Exclusion memo must also be sent to the Office of Budget and Finance, Project and Letting Management, and others (see sample DETERMINATION memo attached).

M If YES to question 21, preparer should complete question 22 (i-v). If questions 3-20 are NO and 21 is YES, the project will still qualify as a Programmatic Categorical Exclusion if questions 22 (i-v) are YES.

22. Since the project involves the use of temporary road, detour or ramp closure, will all of the following conditions be met:	YES	NO
i. Provisions will be made for pedestrian access, where warranted, and access by local traffic and so posted.	_____	_____
ii. Through-traffic dependent business will not be adversely affected.	_____	_____
iii. The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.	_____	_____
iv. The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.	_____	_____
v. There is no substantial controversy associated with the temporary road, detour or ramp closure.	_____	_____

M If questions 3-20 are NO, 21 is YES and 22 (i-v) are YES, the project qualifies for a Programmatic Categorical Exclusion. You may STOP COMPLETING THE CHECKLIST. The checklist should be included in the appendix of the Final Design Report (or Scope Summary Memorandum/Final Design Report). The CATEGORICAL EXCLUSION DETERMINATION memo should be sent to the appropriate Main Office Design liaison unit with a copy of the Final Design Report (or Scope Summary Memorandum/Final Design Report.) A copy of the CATEGORICAL EXCLUSION DETERMINATION memo must also be sent to the Office of Budget and Finance, Project and Letting Management, and others (see sample DETERMINATION memo attached).

M If questions 3-20 are NO, 21 is YES and any part of 22 is NO, go on to question 23.

23. Is the project section listed in 23 CFR §771.117(d) (D List) or is the project an action similar to those listed in 23 CFR §771.117(d)?	YES	NO
	_____	_____

For those questions which precluded a Programmatic Categorical Exclusion, documentation should be provided for any YES response to questions 3-20 or for a NO response to any part of questions 22 (i-v). This documentation, as well as the checklist, should be included in the Design Approval Document, i.e., Final Design Report, etc., to be submitted to the Main Office/FHWA Design liaison unit for submission to the FHWA Division for classification of the project as a D List Categorical Exclusion.